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Statute: Page

National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Sec. 151, *et seq.*):

Section 7 ---------- 30
Section 8(a)(1) ---------- 21, 22, 24, 25, 30
Section 8(a)(3) ---------- 21, 22, 24, 25, 30
Section 8(a)(4) ---------- 21, 22, 24, 30
Section 10(c) ---------- 25, 31
Section 10(e) ---------- 31

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 684

J. P. STEVENS & CO., INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-27a) is reported at 380 F. 2d 292. The Board's decision and order (Pet. App. 39a-66a; J.A. 4-29, 47-271)[1] are reported at 157 NLRB 869.

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[1] "J.A." refers to the Joint Appendix printed for the use of the court below. "Tr." refers to the transcript of testimony in the Board proceeding; "GCX" refers to the General Counsel's Exhibits, "RX" to those of the Company, and "CPX" to those of the Union. References preceding a semicolon are to the Board's findings; succeeding references are to the supporting evidence.

JURISDICTION

The decree of the court of appeals was entered September 1, 1967 (Pet. App. 28a-33a). The petition for a writ of certiorari was filed on October 5, 1967. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Whether substantial evidence supports the Board's findings that the employer discharged 71 employes and denied overtime work to two other employees because of their union activities, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act.

2. Whether, in the circumstances of this case, the Board properly found that the employer restrained his employees in the exercise of their organizational rights by posting notices in some of his plants, and sending copies thereof to all employees at these plants, warning that a union would "operate to your serious harm".

3. Whether, as a remedy for the extensive unfair labor practices in this case, it was reasonable to require the employer (a) to post an appropriate notice in all of its plants in North and South Carolina and to mail a copy thereof to each employee at these plants, and (b) to read or permit the notice to be read to the employees at those of the plants where the unfair labor practices were actually committed.

STATUTE INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Secs. 151, et seq.), are set forth in the Appendix, *infra* pp. 30-31.

STATEMENT

A. The Board's Findings of Fact

1. *The Company's response to the Union's organizational campaign*

The Company has 43 textile plants located throughout North and South Carolina. In May 1963,[2] the Union[3] began a concerted campaign to organize the employees at 20 of the plants—located in Rock Hill and Greenville, South Carolina, and Roanoke Rapids, North Carolina (J.A. 49-50; Tr. 79-81, 862, 953-954). The Company reacted to this organizational drive by posting a notice on the bulletin boards in these plants, stating, in part (J.A. 50; GCX 2(a), Tr. 862):

> TO ALL EMPLOYEES
>
> Since the Union is putting on a campaign to get in here, a good many questions have arisen with regard to the following matters. We have decided to state the Company's position on these subjects as clearly as we can for everybody alike:
>
> (1) This matter is, of course, one of concern to the Company. It is also, however,

[2] All dates are in 1963 unless otherwise stated.

[3] Textile Workers Union of America, AFL-CIO, a party in the court of appeals proceeding.

> a matter of serious concern to you and our sincere belief is that if this Union were to get in here, it would not work to your benefit, but, in the long run, would itself operate to your serious harm.
>
> * * * *

The notice went on to declare the Company's intention to use every "proper means to prevent" the Union from coming in, and added that union adherence would not insulate employees from discharge for cause (J.A. 50-51). In addition to posting this notice, the Company sent copies of it to the employees, along with a covering letter emphasizing the "vital importance" of the subject (J.A. 51; GCX 2(b), Tr. 183, 953).

Despite the Company's avowed opposition to the organizational campaign, the Union succeeded in signing up a substantial number of employees during the spring and summer months of 1963. Pursuant to Union direction, most of the employees in the Rock Hill and Greenville plants sent joint letters to the managers of their plants informing them of their union affiliation and expressing the intention "to help in every way that is legal to get [their] fellow workers to do the same" (J.A. 51; GCX 6(a)). When the Company learned of an employee's union membership, it sent a reply stating that it was "taking due note" of the fact that he had joined the Union and "that your signing up with the union does not give you any immunity of any sort * * *." (J.A. 52; GCX 6(b)). At its Rock Hill and Greenville plants the Company also posted on the bulletin boards the names of those

employees from whom it had received Union participation letters, together with copies of its reply (J.A. 52; Tr. 162-163, 954, 995-998). As employees withdrew from the Union, the Company crossed their names from the posted lists, thus keeping a running account of the progress of the Union's organizational efforts (J.A. 53; Tr. 164, 172-179, GCX 7(b), 29).

2. *The discharges of and denial of overtime work to 73 union supporters*

But this was not the limit of the Company's response to the union drive and to the employees' expression of support for the Union. The Company soon initiated a massive crackdown against the union adherents "to crush the union movement" (J.A. 260). Prior to the organizing campaign, the Company had been tolerant, even lenient, in such matters as absences, work breaks, transfers, and rehirings (J.A. 255-261). Only infrequently did the Company issue formal written reports of the employee reprimands, known as Personnel Action Reports or write-ups, and then only when misconduct was serious or repeated. With the advent of the Union, however, this attitude changed. Write-ups, quickly followed by discharge, became common for union adherents. Incidents or activities that had previously been overlooked now occasioned speedy and severe disciplinary action (J.A. 246-249, 251-261; Tr. 962-963, 1158-1159, 1173-1174, 1510, 1523-1524, 1545-1547, 1948-1940, 4003, 4004, 4017-4021).

In the months following the inception of the Union's organizing drive, the Company discharged 71

employees and deprived two others of overtime work. All of these employees had actively supported the Union before this disciplinary action was taken. We do not consider it necessary or appropriate at this stage in the proceedings to undertake to detail all of the evidence submitted at the lengthy Board hearings (see Pet. App. 3a, n. 3) that supports the Board's findings as to each of these 73 employees.[4] Instead, a summary of the evidence concerning some of these employees, illustrating the manner in which the Company dealt with the employees who chose to support the Union, will demonstrate why plenary review of the substantiality of the evidence is not warranted.

a. *Republic Plant No. 2*

Arthur Wright had been employed for 6 years, and had never received a written reprimand (J.A. 55; Tr. 403, 410-411). At the time of his discharge, he was working in the spinning department on the third shift, where his job was to clean the bobbins on the spinning frames and to sweep the floor (J.A. 54; Tr. 404). Wright joined the Union in June, shortly after the organizational campaign began (J.A. 54; Tr. 405). During the week of July 4, he was called away from his work area by his supervisor, Alvin Bankhead, and asked how he felt about the Union and whether he would sign a union card (J.A. 54; Tr. 404-405). Bankhead asked Wright to keep him informed of the Union's progress and Wright agreed to do so (J.A.

[4] The evidentiary findings relating to each of the 73 employees are set out at J.A. 10-14, 53-242.

54; Tr. 406). Shortly thereafter, Bankhead asked Wright whether he had "heard anything", and Wright replied that he had not (J.A. 54; Tr. 406-407).

On August 13, after being informed of their union membership, the Company sent a letter to Wright and his fellow union adherents, including Idolene Steele and Charles Knight, stating that it was "taking due note" of their avowed union membership and of their intention to organize the Company's plants. A copy of this letter was posted on the bulletin boards on August 17 (J.A. 54; Tr. 407). On August 18, a half hour before the end of his shift, Wright was taken by Bankhead to an area of the floor where 35 to 40 cartons had been piled. Bankhead shoved some of them aside, revealing a considerable amount of accumulated lint between the cartons (J.A. 54; Tr. 410).[5] Bankhead then showed Wright a bobbin which allegedly had not been cleaned, and summarily discharged him. Since there was sufficient time left on his shift to clean the bobbin, Wright asked what he should do about it, but Bankhead replied that neglecting to clean a bobbin was "an automatic termination" (J.A. 54-55; Tr. 410, 1752-1753). Two other employees, Carroll Davis and Walter Holman, the cleaners on the first and second shifts, shared with Wright the equal responsibility for keeping the area clean. But their names were not posted as union members, and they were not discharged (J.A. 55; Tr. 1746-1747).

[5] Bankhead testified that this amount of lint could have been accidentally blown there by a blower which was used in cleaning the spinning frames (J.A. 54; Tr. 1747).

Idolene Steele, Wright's car pool partner and another known union adherent, was discharged the same night (J.A. 56; Tr. 423, 468, 1733). She had been employed by the Company for a year as a spinner, after working for 17 years in the same capacity at other mills (J.A. 56; Tr. 420). Steele occasionally did clean-up work and, on the night of August 18, Bankhead assigned her to clean the sides of some 29 spinning frames (J.A. 56; Tr. 421-422). The customary practice of the regular cleaners, whose full time was used for the task, was to clean half of the frames one night and leave the other half for the following night (J.A. 56; Tr. 426, 433-434, 474-475). At the end of her shift, Bankhead showed Steele 7 frames whose sides she had not cleaned, and told her she was discharged (J.A. 56; Tr. 423). During his four years in the department, Bankhead concededly had not discharged any other employee for improper cleaning (J.A. 56; Tr. 1734, 1741). Steele had never received a written complaint from any of her supervisors (J.A. 56; Tr. 426, 1791).

Charles Knight had worked for the Company on the third shift in the card room for 11 years prior to his discharge (J.A. 56; Tr. 372). He was active in the Union's campaign from its inception, and the first two union meetings were held in his home (J.A. 57; Tr. 373). His name was posted on the plant bulletin board on August 17 (J.A. 57; Tr. 374). On August 18, Supervisor Bill Coker discharged him, offering the explanation that he had not tied together the ends of the finished, drawn material which he was

then working on (J.A. 57; Tr. 380). The finished material, about the thickness of a finger, feeds into a can as it comes off the finishing machine (J.A. 57; Tr. 387). In the past, when the material fell into a small can, the operator was supposed to tie the end of the material coming off the machine to the material already in the can. However, when these cans were replaced by larger ones two years earlier, Coker had instructed Knight not to piece the ends together when the can was more than half full of material (J.A. 57; Tr. 377, 390), and Knight worked in that fashion thereafter. He had never received a written complaint, either for that work or for other tasks performed during 9 years of prior employment (J.A. 57, 59; Tr. 378). When he informed Knight of his discharge, Coker indicated that he had orders to discharge everybody that he caught not tying ends together. Yet when Knight suggested that he check the 15 or 20 other cans standing nearby, Coker replied, "to hell with that, I didn't catch them, I caught you" (J.A. 57; Tr. 376). Assistant overseer Bankhead testified that he could not recall ever having discharged an employee for not tying ends together (J.A. 59; Tr. 1706).

Frankie Couch and Elizabeth Hegler were the other two employees in the spinning room night shift whose union membership was posted on the bulletin board. They, however, went to see their supervisors, John Wood and Alvin Bankhead, and told them that they wanted to get out of the Union (J.A. 59; Tr. 424, 496, 469-470). On August 18, Hegler told Wood that she would like her name removed from the bul-

letin board because her job was more important to her than the Union (J.A. 59; Tr. 496). Wood asked if she had been attending union meetings, and she replied that she had attended one (J.A. 59; Tr. 496). Supervisor Bankhead continued to question her and asked if she had received a letter announcing the place of a union meeting and, if so, to bring him the letter (J.A. 59; Tr. 498-499). In addition, on three separate occasions Bankhead asked Hegler if a representative of the Board had interviewed her and if she had a copy of what he wrote down (J.A. 59; Tr. 499-501). Similarly, when employee Couch asked that her name be removed, Wood stated that she would have "to prove" to him that she was not for the Union (J.A. 59; Tr. 472). G.M. Mendenhall, superintendent of the spinning department, told Couch that he was pleased about her action, and added that he had tried to speak to another employee, James Lee, about the Union but that he was "all union and * * * said he always would be" (J.A. 60; Tr. 471). Mendenhall then prevailed upon Couch to talk to Lee on this subject, but Couch was unable to get Lee to withdraw from the Union (J.A. 60; Tr. 471). Neither Hegler nor Couch was discharged, but Lee was (J.A. 63-65; Tr. 506-508).

b. *The Whitmire Plant*

Donald Cudd was hired in 1949 and worked in the spinning department (J.A. 100; Tr. 2164). He joined the Union in the summer of 1963. Together with Fred Dough, a union organizer, Cudd called on other employees at their homes and asked local mer-

chants to help supply a union meeting place (J.A. 100; Tr. 2165-2170). Both Donald Cudd and his father, Jess (also a Company employee), were frequently visited at their home by Dough. General overseer D.W. Stone lived a few doors from the Cudds and on at least one occasion passed their house while they were talking to Dough in the front yard. Dough was known by both Stone and assistant overseer Clyde Taylor to be a representative of the Union (J.A. 100; Tr. 2166-2168, 2275-2276).

Before joining the Union, Cudd had never received a written reprimand (J.A. 101; Tr. 2170). On September 6, assistant overseer Taylor gave Cudd his first write-up, for not "piecing a doff" properly (J.A. 101; Tr. 2170). On September 26, Cudd received another write-up from Taylor, for piecing an end too high—an almost daily occurrence on every shift, for which no employee had ever before been discharged or written up (J.A. 101; Tr. 2172, 2175, 2179, 2196). On October 2, after finishing about two-thirds of his shift, Cudd was confronted by Taylor. Taylor showed Cudd four or five bobbins, allegedly from Cudd's frames, which had been pieced too high. Taylor thereupon summarily discharged him (J.A. 101; Tr. 2175-2176, 2249). At the Board hearing, Taylor conceded that he had seen the bad piecing on the frames about five hours before he spoke to Cudd and discharged him (J.A. 101; Tr. 2284-2285). Because of the processing that took place during the five-hour interval, it was impossible to determine whether the bobbins shown Cudd in

fact came from his frames (J.A. 101; Tr. 2176, 2284-2285).

Jess Cudd, Donald's father, had worked as a doffer in the spinning department in the Whitmire plant for 50 years. During his entire period of employment he had received a written reprimand only twice, once in 1948, and again in September 1963, for running short doffs (J.A. 101; Tr. 2194). On October 6, Jess and his son (who was continuing his union activity after his discharge) attended a union meeting, and on the following day they formally advised the Company by telegram of their union membership. They were the only two employees in the Whitmire plant to affiliate with the Union (J.A. 102; Tr. 2191-2192). On October 17, Jess received his third write-up in 50 years, because of poor "end piecing" (J.A. 102; Tr. 2197).

Shortly before Christmas, overseer Stone told Jess that his son, Donald, was passing out union literature in the neighborhood. Stone suggested that, if Jess were to adopt Donald's two children, he could receive $250 a month in public relief for their upkeep and could then quit his job at the plant; Stone pointed out that, by adding Jess's social security benefits to the relief money, Jess would receive almost as much as the Company was paying him now (JA. 102; Tr. 2204-2205). Although it had been the Company's practice at Christmas to give tickets exchangeable for fruit to families of employees with children (JA. 103; Tr. 2204-2205), this Christmas the Company skipped the Cudds. Jess asked Stone

for an explanation, and was told that if Jess would "run Donald * * * off, * * * and quit [himself] it'd be all right" (J.A. 103; Tr. 2205). Stone added that, if he did give Jess the fruit tickets, the Company would "run me off from here" (J.A. 103; Tr. 2206).

On January 2, 1964, when Jess came on duty on the first shift, he found that three frames that needed doffing had been left over from the previous shift. During the morning, Jess proceeded to doff two of these frames as well as six of his own. However, during the latter part of the shift, assistant overseer Taylor reminded Jess of the one frame from the previous shift which still remained undoffed. Jess maintained that he was "working just as hard" as he could, whereupon Taylor stated that the Company was not "going to stand for that" and summarily discharged him (J.A. 102; Tr. 2200, 2203).

c. *The Blackhawk Tufting Plant*

James Goodwin had been working in the warehouse for seven years and was a machine driver on an extractor, a machine which pulls bales of cotton out of a stack (JA. 122; Tr. 2889). He informed the Company of his union membership, and in late August the Company included his name on the union list posted in the plant (J.A. 122; Tr. 2880). A day or so later, superintendent Griffin told the assembled warehouse employees that the Company would take them back next season provided they "all use [their] head before [they] do anything wrong." Griffin added that he "was not talking about the union because

[he was] not allowed to say anything about that" (J. A. 122; Tr. 2890).

On Friday, August 26, foreman Ernest Hunter informed the employees working in the warehouse that those who had signed union cards were to report immediately to the office of the manager, Victor Kittles (JA 122; Tr. 2894-2895). Approximately 16 employees, including Goodwin, responded to this order. As the group entered the office, Kittles asked the employees "what was on their minds." One of the employees explained that Hunter had stated that Kittles wanted to see them (J.A. 122; Tr. 2895). Kittles denied making any such request, but added, "I thought maybe there was some question that you all wanted to ask me" (*ibid.*). One of the assembled union members replied that they had nothing to say (J.A. 122-123; Tr. 2896).

On the following Monday, when Goodwin reported to work, superintendent Griffin instructed all of the machine drivers to go to the warehouse shop and stand by their machines because some orders were about to come in (J.A. 123; Tr. 2900). While they were waiting for further instructions, Scuddy Hellem, a fellow employee, asked Goodwin to go with him to get some coffee and sandwiches at a nearby cafe. As the two employees went out, they were observed by foreman Hunter. When they returned in 6 or 7 minutes with the food and drinks, they passed by superintendent Griffin, who said nothing (J.A. 123; Tr. 2091-2093). About 30 to 45 minutes after their return, the work orders were ready and the employees began to fill them. At noon, how-

ever, superintendent Griffin informed Goodwin and Hellem that they were being discharged for leaving the mill without permission, in violation of a Company rule. Griffin told Goodwin to get off the Company's property as "fast as he could get to his car" (J.A. 123; Tr. 2920). The warehouse rule that employees must get permission from a supervisor before leaving the plant to get coffee had frequently been breached by employees, and, according to Griffin's own testimony, no employee prior to Goodwin had ever been discharged for breaking it (J.A. 123; Tr. 3291-3292, 3322).[6]

d. *The Watts Plant*

Forty-six employees at the Watts plant joined the Union. The Company was notified of their membership by a joint Union-employee telegram dated October 6, and by similar letters dated October 10 and 15 (J.A. 195; Tr. 7757, 7768, 7585, 7586). As in the other plants, the Company posted the names of

[6] About three or four days after Goodwin's discharge, foreman Hunter approached employee James Rosemond and suggested that he talk to manager Kittles about having his name taken off the posted list of union members (J.A. 124; Tr. 2965-2967, 2969). They were then joined by John Mansell, the other working foreman, and Rosemond was told that, "[if] enough of you go up there and take your names off, they will hire James Goodwin back" (J.A. 124; Tr. 2967). Moreover, superintendent Griffin told a group of employees in the warehouse that Goodwin had 6 or 7 years' seniority in the plant and he was trying to get his job back. Griffin added that, if the other employees in the warehouse who had joined the Union would come to him and "confess that [they were] wrong for joining this union," Goodwin would have a better chance of being reemployed (J.A. 124-125; Tr. 2987-2989).

union supporters on the plant bulletin board (J.A. 194; GCX 29). In the middle of the month, mimeographed slips addressed to Union Representative J.D. Good were circulated among the employees in the plant on Company time. The slips read as follows:

> Please remove my name as a member of the Union, as I want no part of it. A copy of this letter is being sent to the main office of the Watts Mills Plant (J.A. 194; Tr. 7623, GCX 30).

On about October 17, employee A.L. Hill was approached on the plant floor by several fellow employees, who gave him one of these slips to sign. Later that day, another employee, stating that the supply of slips had been exhausted, asked Hill if he would type some more (J.A. 194; Tr. 7614-7616). Hill agreed to do so, and, leaving his looms, he went to the weave room office where he proceeded to run off a number of slips on the Company's duplicating machine (J.A. 194-195; Tr. 7616-7618). While this was taking place, assistant overseer Harold King and superintendent Todd passed in and out of the office. As Hill was leaving the office to return to his loom, Todd remarked to another employee present that, although he (Todd) could have nothing to do with these activities, he was glad to see that they were taking place (J.A. 195; Tr. 7619-7620). A day or so later, general superintendent H. J. Hamrick approached Hill at his work area, shook his hand, and told Hill that he bore no hard feelings and "was glad" that Hill had withdrawn from the Union (J.A. 195; Tr. 7621-7622).

Within a few days after the dissemination of these withdrawal slips, 42 of the 46 employees whose names were posted as union members had notified the Company that they were leaving the Union (J.A. 195; Tr. 7757, 7768, 7778, 7782). The four employees who did not withdraw their membership were Ford Kennedy, Wilbur Burke, Clarence Poole, and M. C. Richardson (J.A. 195; Tr. 7782, 7668-7670, 7773, 7774, 8044). Kennedy left the plant at about this time because of a heart attack and was confined to a hospital for several months (J.A. 195; Tr. 7668, 7670, 8044); the record is unclear on what happened to Burke, but he was not in the Company's employ at the time of the Board hearing (J.A. 195). As set forth below, Poole and Richardson were discharged (J.A. 195; Tr. 7884-7885, 7732-7733).

Clarence Poole was a picker tender and doffer in the picker room (J.A. 196; Tr. 7671-7672). Poole's union membership was posted by the Company on October 7 (J.A. 196; Tr. 7673).[7] On October 15, assistant overseer James Bright issued Poole the first write-up he had ever received, allegedly for putting pieces of rayon which were too large into

[7] About a week later, supervisor Ernie Pennington approached employee James Merrill, who worked alongside Poole. After asking Merrill if he had joined the Union, Pennington told Merrill that the Company knew that Poole was trying to get all the carding and picker room employees to join the Union (J.A. 196; Tr. 7748-7749, 7751). The next day, general overseer Russell Lyons warned Poole and employee Thomas Chappell (also a posted union member) that the production on their shift was "off" (J.A. 196; Tr. 7675, 7711).

his machine (J.A. 197; Tr. 7673, 7855). Bright had never before issued a write-up for this common error (J.A. 197; Tr. 7855, 7859). Bright estimated that one piece of rayon from Poole's machine weighed about five pounds—four pounds over the permissible weight—but he did not weigh it. After Bright left, Poole weighed the piece of rayon and found that it weighed 14 ounces (J.A. 197; Tr. 7677).

On the following day, October 16, overseer Bright noticed that neither Poole nor fellow employee Thomas Chappell was at the machines (J.A. 197-198; Tr. 7869, 7873). Chappell returned about 10 minutes later (J.A. 198; Tr. 7873). When Poole returned after another 10 minutes, Bright asked him why he had left the machines unattended. Poole replied that Chappell was there when he left and that he told Chappell that he was going to the restroom (J.A. 198; Tr. 7875). Bright did not question Chappell, who had signed one of the union withdrawal slips (J.A. 196; Tr. 7782), nor did he otherwise attempt to determine who was responsible for leaving the machines unattended (J.A. 198; Tr. 7875-7876, 7877-7882). The next day, Bright told Poole that his production was inadequate and discharged him (J.A. 198; Tr. 7684). Bright testified that the discharge decision had been made when he told overseer Lyons that Poole had left his machine unattended (J.A. 198; Tr. 7703, 7884-7885, 7887). Bright conceded that Poole was the first employee he had discharged for "production purposes" (J.A. 198; Tr. 7890).

M. C. Richardson was a "blender tender" on the second shift. He brought bales of fabric to a hopper

he operated (J.A. 198; Tr. 7721-7722). The Company posted Richardson's union membership on the plant bulletin board on October 15 (J.A. 198-199; Tr. 7723). Later that day, Richardson was issued the first write-up in his employment history, allegedly for allowing his machine to run low on material (J.A. 199; Tr. 7726, 7727). On October 21, he was again written up, allegedly for the same reason and for not sweeping up properly around his machine (J.A. 199; Tr. 7728-7730). On November 15, he received another write-up, this time allegedly for putting oversized pieces of material into his machine (J.A. 199; Tr. 7734-7735). General overseer Lyons then reminded Richardson that he had once "promised to quit" if his work was not satisfactory (J.A. 199; Tr. 7731-7732). Again on November 26, Lyons reminded Richardson of this promise. Richardson replied that the Company would have to fire him if it wanted him out of the plant. Lyons promptly did so (J.A. 199; Tr. 7732-7733).

e. *The Rosemary Plant*

Charles Haithcock and *Lawrence Haithcock* were hired in November 1962 and July 1963 respectively (J.A. 214; Tr. 10174-10175). The two brothers worked in the harness room on the second shift, from 4 p.m. to midnight (J.A. 214; Tr. 10175). During their entire period of employment, they never received a write-up, nor were there any complaints about their work (J.A. 215; Tr. 10176, 10294, 10351). Both employees joined the Union,

and the Union so notified the Company on September 18 (J.A. 214; Tr. 9711, 10177).

On September 25, the Haithcocks did not bring their lunch with them, as they usually did. At the lunch break, they went to a restaurant across the street from the plant and brought back something to eat. The restaurant is commonly used by on-shift employees (J.A. 214; Tr. 10177-10179, 10182-10183, 10304, 10356). Although there was an unposted Company rule against leaving the plant during a shift without the permission of a supervisor, neither employee asked for permission since there was no supervisor on duty at the time. Overseer Alonzo Carver worked only the first shift and the leadman on the second shift, James Stafford, did not have the authority to grant such permission (J.A. 214; Tr. 10179, 10180). On this occasion, Stafford said nothing to the Haithcocks when he saw them leave, or when he saw them return with their lunches some 10 to 15 minutes later (J.A. 214; Tr. 10179-10181).

The next morning, overseer Carver told Stafford that he had driven to the plant the preceding evening in his off-hours and had stationed himself in the parking lot for the specific purpose of watching the two employees, and had seen the Haithcocks leave the plant (J.A. 215; Tr. 10287, 10290, 10317-10318). As Stafford testified without contradiction, Carver had been coming back to the plant for several days, at about lunch-break time, to check on the Haithcocks (J.A. 215; Tr. 10298). When the Haithcocks reported for work the following afternoon, September 26, supervisor Paul King told them that, since

they had violated a plant rule against leaving the plant during a lunch break without permission, they were being discharged (J.A. 215; Tr. 10181, 10187).

B. The Decisions of the Board and the Court of Appeals

The Board found that the Company, in violation of Section 8(a)(1) and (3) of the Act, discharged 71 employees and denied overtime work to two others because of their union activities (Pet. App. 40a, 45a-50a, 57a, 65a; J.A. 262, 267).[8] In addition, the Board found that the Company committed independent violations of Section 8(a)(1) of the Act by threats of reprisals, promises of benefits, coercive interrogation of employees concerning union activity, and surveillance of such activity; by mailing to its employees, and posting on its bulletin boards, a notice which in effect threatened the employees with harm for engaging in union activities; and by posting the names of union adherents on plant bulletin boards and then deleting their names as they recanted their union membership (Pet. App. 41a-45a).[9]

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[8] The Board found that two of the employees were also discriminated against because of testimony which they had given in a Board proceeding, so that the Company also violated Section 8(a)(4) of the Act (Pet. App. 45a, n. 5, 48a).

[9] The Board found that a preponderance of the evidence did not establish that the Company had violated the Act by its discharge of eight other employees, and dismissed the complaint as to these employees (Pet. App. 57a-58a). The Union sought review of the Board's action with respect to six of these employees, and the court of appeals sustained the Board's findings as to them (Pet. App. 3a, 18a-19a).

The Board ordered the Company to cease and desist from these unfair labor practices, to reinstate with back-pay the employees discriminated against, and to post appropriate notices (Pet App. 58a-61a). The Board, however, concluded that these conventional remedies would not alone be "completely adequate to undo the effect of the massive and deliberate unfair labor practices committed by [the Company] in its successful efforts to frustrate organization by its employees" (Pet App. 55a-56a). Accordingly, the Board further ordered the Company to mail a copy of the Board's remedial notice to all of its employees at all 43 of the Company's plants in North and South Carolina; to post copies of the notice on the bulletin boards of all of these plants; to read the notice to all of the employees at these plants; and to give the Union, upon request, access to bulletin boards and other places where notices to employees are customarily posted, for a period of one year (Pet. App. 55a-57a).

The court of appeals held that the evidence "overwhelmingly supports the Board," and accordingly upheld all of the Board's findings of Section 8 (a) (1), (3) and (4) violations (Pet. App. 18a-19a). As to the Board's order, the court of appeals found appropriate the provisions which required the Company to cease and desist from the unfair labor practices found, to reinstate with back-pay the discriminatees, to post the notices in all of its 43 plants, and to mail a copy of the notice to each of its employees at these 43 plants (Pet. App. 21a-24a). The court, however, granted enforcement of the reading require-

ment only at the 20 plants where the unfair labor practices occurred and required the Board to afford the Company, at its option, the alternative of having the notice read by a Board representative, rather than by its own officials (Pet. App. 24a-26a).[10]

ARGUMENT

1. Petitioner's contention (Pet. 35-137) that the court of appeals erred in affirming the Board's findings that the discharges of the 71 employees and the denial of overtime work to two employees were discriminatorily motivated raises only an evidentiary issue which does not warrant further review. *Universal Camera Corp.* v. *National Labor Relations Board*, 340 U.S. 474, 491; *National Labor Relations Board* v. *Pittsburgh Steamship Co.*, 340 U.S. 498, 502-503. In any event, the evidence carefully considered by the Board so overwhelmingly supports its findings that, as the court below stated, "[t]here can be no room for doubt of the Board's ultimate conclusion" of unlawful motivation (Pet. App. 17a). Similarly, petitioner's wholesale condemnation of the Board's determination of relative credibility raises no issue of substance. Contrary to petitioner's allegation (Pet. 36-37), it is hardly indicative of bias and prejudice that the resolution of conflicting testimony was largely adverse to the charged party. *Na-*

[10] The court of appeals also declined to enforce the portion of the Board's order requiring the Company to make its bulletin boards available to the Union (Pet. App. 26a-27a). The Board has not cross-petitioned to seek review of the court's modification of its order.

tional Labor Relations Board v. *Pittsburgh Steamship Co.*, 337 U.S. 656, 659-660.[11] The summary of the evidence on some of the discharges, set out above, illustrates the soundness of the decision of the court below that the Board's findings had more than substantial basis in the record, and it demonstrates why it is wholly unnecessary for this Court to conduct a further canvass of the 11,000 page transcript.

2. Nor is there merit to petitioner's claim (Pet. 29-35) that the court below erred in sustaining the Board's conclusion that the Company violated Section 8(a)(1) of the Act by mailing to its employees and posting on its bulletin boards a notice warning that the advent of the Union would "operate to your serious harm" (*supra*, pp. 3-4). In the context of the Company's coercive campaign to snuff out the Union—including 73 individual violations of Section 8(a)(3), two violations of Section 8(a)(4), and some 45 independent violations of Section 8(a)(1)—there is ample support in the record for the Board's finding (Pet. App. 44a-45a) that the Company's warning of "serious harm" itself constituted a threat within the meaning of Section 8(a)(1) of the Act.

Although other courts have held similar notices to be noncoercive (see Pet. 31-33), there is no true conflict of decisions, for those cases are distinguish-

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[11] Petitioner's contention significantly ignores the fact that the Board dismissed the complaint insofar as it alleged that the discharges of eight other employees were discriminatory (Pet. 57a-58a). As the court below noted, the Board's action in this respect implies that it accepted petitioner's stated reason for these discharges (Pet. App. 16a-17a).

able from the situation here. As the Court of Appeals for the District of Columbia Circuit pointed out in *Amalgamated Clothing Workers* v. *National Labor Relations Board*, 365 F. 2d 898, 910: "The notice may take a different coloration by virtue of the accompanying circumstances." In none of the earlier cases was the notice issued in the context of other unfair labor practices as massive and deliberate as those committed by the Company here.[12] And, it was on this limited ground, *i.e.*, in "the 'particular setting' in this case", that the court below sustained the Board's finding (Pet. App. 21a), while agreeing that in a less hostile milieu the notice might not be found coercive.

3. Finally, no issue warranting review is presented by the provisions of the Board's order, as modified and enforced by the court of appeals, requiring the posting, mailing, and reading of the Board's remedial notice. Section 10(c) of the Act authorizes

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[12] See, *e.g.*, *Wellington Mill Div., West Point Mfg. Co.* v. *National Labor Relations Board*, 330 F. 2d 579, 583 (C.A. 4) (court found only one other violation of Section 8(a)(1)); *National Labor Relations Board* v. *Lyman Printing Co.*, 356 F. 2d 844, 846 (C.A. 4) (no finding of any other violations of the Act); *National Labor Relations Board* v. *Threads, Inc.*, 308 F. 2d 1, 8-9 (C.A. 4) (two violations of Section 8(a)(1), and one violation of Section 8(a)(3)); *Surprenant Mfg. Co.* v. *National Labor Relations Board*, 341 F. 2d 756, 758-760 (C.A. 6) (two other Section 8(a)(1) violations). Cf. *National Labor Relations Board* v. *Southwire Co.*, 352 F. 2d 346, 347-348 (C.A. 5) (court found that language concerning "serious harm" to employees was "wisely" changed in later company notices, and concluded that "[u]nder these circumstances" the second notices were not violative of the Act).

the Board, upon finding an unfair labor practice, to require the employer "to take such affirmative action * * * as will effectuate the policies of this Act." As this Court recently observed in *Fibreboard Paper Products Corp.* v. *National Labor Relations Board*, 379 U.S. 203, this section charges the Board with the task of devising appropriate remedies, a matter of peculiar administrative competence, and for this reason the "Board's power is a broad discretionary one, subject to limited judicial review." 379 U.S. at 216. Contrary to petitioner's assertions (Pet. 11-29), the remedies enforced by the court of appeals, tailored to the special facts of this case, are well within the broad power conferred by Section 10(c).

a. As the court below pointed out (Pet. App. 23a), the requirement that the Company post the notice in all of its 43 North and South Carolina plants is plainly appropriate in this case:

> Flagrant violations occurred at each of the twenty plants involved in this proceeding where organization campaigns were instituted. The area is geographically limited and contiguous; the evidence shows that the Company's policies were not determined at individual plant levels alone. That being so, including the other twenty-three Carolina plants in the order was justified "since there is every reason to anticipate that if not deterred, [the Company] would pursue the same discriminatory policies" throughout the region. [Citing cases.]

The requirement that the Company also mail the notice to the employees in these 43 plants is equally

proper here. As the court of appeals added (Pet. App. 24a):

> At the outset of the Union campaign, the Company posted its own Notice * * * on the bulletin boards in the plants involved in this case. But the Company obviously thought that mere posting would not be sufficient to drive home its point, because in addition it mailed a copy to each employee in the plants. The Board's notice is entitled to the same circulation for the same reasons * * *.

The Company is hardly in a position to urge that it was improper for the Board to share the Company's view that merely posting notices on plant bulletin boards would not be effective in disseminating the information contained.

b. In view of the flagrant and pervasive unfair labor practices that the Company engaged in, it was also permissible for the Board to conclude that, in order to eradicate the lingering coercive impact of those illegal practices, it was also necessary for the employees to receive oral assurances on their jobsites that the Company would respect their organizational rights. Despite petitioner's characterization (Pet. 11-13), this reading requirement is not tantamount to a "confession of guilt." The notice to be read (Pet. App. 63a-64a) speaks prospectively, and merely advises the employees that the Company will not engage in certain specified conduct that it is legally enjoined from engaging in. It does not assert that the Company has engaged in unlawful conduct in the past, nor does it recite the cease and desist pro-

visions of the Board's order.[13] In any event, the court below modified the reading requirement so as to afford the Company the option of having the notice read by a Board representative instead of by its own officials.[14] The court explained that "[t]his alternative eliminates the necessity of participation by the Company, if it so desires, and still guarantees effective communication of the Board's order to the Company's employees" (Pet. App. 26a).

Nor is review of the reading requirement in this case warranted because the Courts of Appeals for the Fifth and District of Columbia Circuits have denied enforcement of reading requirements. See *National Labor Relations Board* v. *Laney & Duke Storage Co.*, 369 F. 2d 859, 869 (C.A. 5); *Int'l Union of Electrical Workers* v. *National Labor Relations Board (Scott's, Inc.)*, 66 LRRM 2081, 2082-2083 (C.A. D.C., Wright J., dissenting), decided September 6, 1967. Those decisions, like the instant case, turned on the particular circumstances involved. The unfair labor practices in *Laney & Duke* were not as extensive and aggravated as those here.[15]

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[13] See *National Labor Relations Board* v. *Express Publishing Co.*, 312 U.S. 426, 438-439. The language from the notice in *Harry F. Berggren & Sons*, 165 NLRB No. 52, relied on by petitioner (Pet. 9, 12), was subsequently modified by the Board to delete any reference to past unlawful acts (unreported order entered September 28, 1967).

[14] The Court also limited the reading requirement to the 20 plants where the unfair labor practices occurred.

[15] In *Gotham Industries Inc.*, 167 NLRB No. 91, 66 LRRM 1127, October 2, 1967, upon finding that the respondents'

While the situation was somewhat more severe in *Scott's*, the court, while declining to sanction a reading requirement there, acknowledged "that some conduct on the part of an employer or a union might reach such extreme dimensions as to justify the novel and drastic step of requiring the offending party to stand up before the employees and read the Board's notice publicly" (66 LRRM at 2083). The instant case is such a situation, and thus the cases are, in fact, consistent.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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prior unfair labor practices were not so aggravated as to warrant unusual remedial action, the Board declined to impose a reading requirement.

APPENDIX

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C., Secs. 151, *et seq.*) are as follows:

RIGHTS OF EMPLOYEES

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a) (3).

UNFAIR LABOR PRACTICES

Sec. 8 (a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

* * * *

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: * * *

* * * *

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act;

* * * *

Sec. 10 (c) * * * If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: * * *

(e) * * * The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive.

* * * * *

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